United Nations A/HRC/34/31

General Assembly

Distr.: General
26 January 2017

Original: English

Human Rights Council
Thirty-fourth session
27 February-24 March 2017
Agenda items 2 and 3
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 32/14, in which the Council requested the United Nations High Commissioner for Human Rights, as Co-Chair of the Global Migration Group Working Group on Migration, Human Rights and Gender, to continue to develop principles and practical guidance on the protection of the human rights of migrants in vulnerable situations within large and/or mixed movements, on the basis of existing legal norms, and to report thereon to the Human Rights Council at its thirty-fourth session.

In the present report, the High Commissioner describes the rationale for and progress of the principles and practical guidance to date. He presents a draft set of principles derived from international human rights law and related branches of law, as applicable. The present report should be read in conjunction with the related conference room paper outlining draft guidelines complementing each principle. The draft guidelines are designed to provide guidance derived from international best practice to States and other stakeholders on upholding the human rights of migrants in vulnerable situations.

GE.17-01201(E)
1701201

Please recycle

Contents

		Page
I.	Introduction	3
II.	Background	4
	A. The concept of a "migrant in a vulnerable situation"	5
	B. Principles and practical guidance	6
III.	The principles	7
Annex		
	Glossary	13

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 32/14, in which the Council requested the United Nations High Commissioner for Human Rights, as Co-Chair of the Global Migration Group Working Group on Migration, Human Rights and Gender Equality, to continue to develop principles and practical guidance on the protection of the human rights of migrants in vulnerable situations within large and/or mixed movements, on the basis of existing legal norms, and to report thereon to the Human Rights Council at its thirty-fourth session.

2. Accordingly, on 27 October 2016, the Office of the United Nations High Commissioner for Human Rights (OHCHR) addressed a note verbale to Member States and intergovernmental and non-governmental organizations, seeking their views and information on the issue. Written submissions were received from States, intergovernmental organizations, non-governmental organizations and individual experts.[1]

3. The Global Migration Group Working Group on Migration, Human Rights and Gender Equality, led by the High Commissioner as Co-Chair, is developing the principles and guidelines through a human rights-based, multi-stakeholder, expert process, which is open to the involvement of all relevant actors.[2] This initiative reflects the primary stated purpose of the Global Migration Group, which is "to promote the wider application of all relevant international and regional instruments and norms relating to migration" and "to encourage the adoption of more coherent, comprehensive approaches to the issue of international migration".[3]

4. The draft principles and guidelines have already been referenced in reports to the Human Rights Council and General Assembly (see A/HRC/33/67, and A/71/285, para. 106). States have acknowledged and called for the continuation of the process of developing the principles and guidelines (see the New York Declaration for Refugees and Migrants, para. 51 and Council resolution 32/14).

5. In view of considerations of space, the present report provides an introduction and 20 draft principles, as derived from international human rights law. The report should be read in conjunction with the related conference room paper outlining a set of draft guidelines, which complement each principle.[4] The principles and guidelines are currently

---

[1] In addition to submissions from a large number of non-governmental organizations and individual experts, submissions were received from the following States: Australia, Cuba, Ghana, Iraq, Italy, Japan, Lebanon, Mexico, Peru, Qatar, Serbia, Slovakia, Slovenia, Sweden, Turkey and the European Union. The submissions can be found on the migration page of the OHCHR website at www.ohchr.org/EN/Issues/Migration/Pages/largeandormixedmovements.aspx.

[2] Members of the Working Group on Migration, Human Rights and Gender Equality include the International Labour Organization (ILO), the International Organization for Migration (IOM), OHCHR, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime, the United Nations University, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the World Health Organization. The group is co-chaired by OHCHR and UN-Women.

[3] See www.globalmigrationgroup.org/system/files/uploads/documents/Final_GMG_Terms_of_Reference_prioritized.pdf and www.globalmigrationgroup.org/what-is-the-gmg.

[4] Each principle is illustrated by a set of related practical interventions, "promising practices", which are examples of measures that have been implemented by States and other stakeholders and are intended to encourage practical action to give effect to the principles and guidelines.

in draft form and the present document is being presented as a progress report, pursuant to the request of the Human Rights Council. Since many terms used in global discussions in this area have required clarification, a limited glossary of key terms used in the report and the principles and guidelines has been included in the annex to the present document.

II. Background

6. Around the world, many millions of migrants and refugees are in a vulnerable human rights situation, including in the context of large and/or mixed movements.

7. In the New York Declaration for Refugees and Migrants, the General Assembly recognized the complex reasons for contemporary movement: "Since earliest times, humanity has been on the move. Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Still others do so in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change) or other environmental factors. Many move, indeed, for a combination of these reasons."[5] The Secretary-General has also noted in this regard that the gradual expansion of refugee protection notwithstanding, many people are compelled to leave their homes for reasons that do not fall within the refugee definition in the Convention relating to the Status of Refugees (see A/70/59, para. 18).

8. While migration can be a positive and empowering experience for individuals and communities and can benefit countries of origin, transit and destination, it is clear that precarious movements of people are a serious human rights concern (see A/HRC/31/35). Although they might fall outside the specific legal category of refugee, migrants may need particular attention to be paid to the respect, protection and fulfilment of their human rights. Some will need specific protection as a result of the conditions they are leaving behind, the circumstances in which they are compelled to move and in which they are received, and/or according to specific characteristics such as age, gender, disability or health status. It is these people on the move and these situations of movement that are the focus of the current principles and guidelines.[6]

9. Recognizing that all people on the move are rights holders, entitled to the equal protection of their rights under international human rights law and related standards, it is important to uphold existing protections for specific groups that are established in international law. Refugees and asylum seekers are entitled to specific protection under international refugee law.[7] The human rights and particular needs of other groups of individuals, such as trafficked persons, migrant workers, stateless persons and persons with disabilities, have similarly been recognized in specific international instruments.[8] The development of principles and guidelines is thus without prejudice to the specific rights of particular groups who are part of such movements.

---

[5] See also the preamble to the Paris Agreement under the United Nations Framework Convention on Climate Change.

[6] For further background on the rationale for the principles, see A/HRC/33/67.

[7] Including the Convention relating to the Status of Refugees and its 1967 Protocol.

[8] Specifically, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Migration for Employment Convention (Revised), 1949 (No. 97); ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) the Convention relating to the Status of Stateless Persons and the Convention on the Rights of Persons with Disabilities.

10. When the international community adopted the Universal Declaration of Human Rights on 10 December 1948, it was accepted as a common standard of achievement for all peoples and nations, spelling out for the first time in human history the minimum civil, political, economic, social and cultural rights that all human beings should enjoy. The International Bill of Human Rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) makes exceptions between nationals and non-nationals in respect of only two rights, and even then only in limited circumstances.

11. Human rights are universal, inalienable, indivisible and interdependent. The international human rights framework is clear that in order to give effect to those rights and to uphold the fundamental principle of non-discrimination, the unique and individual circumstances of each person must be considered by duty bearers.[9] By becoming parties to international human rights treaties, States assume obligations under international law and undertake to put in place domestic measures and legislation compatible with their treaty obligations.[10] Those obligations have practical consequences for municipal authorities and local governments that may be required by domestic law to uphold them. States are also responsible for the human rights consequences of the actions, or failure to act, of private actors, including corporations, civil society actors and private security contractors, if they fail to take appropriate steps to prevent human rights abuses they knew or should have known about, or to investigate and punish those abuses, and provide compensation.

A. The concept of a "migrant in a vulnerable situation"

12. The concept of a "migrant in a vulnerable situation" may be understood as a range of factors that are often intersecting, can coexist simultaneously and can influence and exacerbate each other. Situations of vulnerability may change over time as circumstances change or evolve. The factors that create a vulnerable situation for migrants might be what drives their migration from their countries of origin, occurs in transit and/or is related to a particular aspect of a person's identity or circumstance. Thus, vulnerability in this context can be understood as situational (external) and/or embodied (internal).[11]

A vulnerable situation arising from the reasons for leaving countries of origin

13. The drivers for "non-voluntary" precarious movements are multiple and often intertwined, and should be assessed on an individual basis. They can include poverty, discrimination, lack of access to fundamental human rights, including education, health,

[9] Article 2 of the International Covenant on Civil and Political Rights makes clear that the duty bearer in general is the State in whose territory a person is located, obliging States to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[10] States assume obligations and duties under international law to respect, protect and fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of human rights.

[11] It is important to note that migrants often show considerable resilience and agency throughout their migration. The vulnerable situations that migrants face have often been created for them by others through law, policy and practice. A human rights-based approach to migrants in a vulnerable situation would therefore seek to ensure that responses aim above all to empower migrants, rather than stigmatizing them and denigrating their agency. See, for example, A/HRC/33/67, paras. 9-12 and A/71/285, paras. 59-61.

food and water, and decent work, as well as xenophobia, violence, gender inequality, the wide-ranging consequences of natural disaster, climate change and environmental degradation, and separation from family. The New York Declaration for Refugees and Migrants emphasizes in addition that many people move, indeed, for a combination of these reasons.

A vulnerable situation occurring in the context of the circumstances encountered by migrants en route, at borders and at reception

14. People are often compelled to utilize dangerous means of transportation in hazardous conditions and to resort to the use of smugglers and other types of facilitators, which can place them in situations of exploitation, at risk of trafficking in persons and other abuse. Such a journey can be marked by hunger, deprivation of water, a lack of personal security and lack of access to medical care. Many migrants can spend long periods of time in transit countries, often in irregular and precarious conditions, unable to access justice and at risk of a range of human rights violations and abuses. The inadequate and often harsh conditions in which they are received at borders can also violate rights and further exacerbate vulnerabilities. Responses, such as the arbitrary closure of borders, denial of access to asylum procedures, arbitrary push-backs, violence at borders committed by State authorities and other actors (including criminals and civilian militias), inhumane reception conditions, a lack of firewalls, and denial of humanitarian assistance, increase the risks to the health and safety of migrants, in violation of their human rights.

A vulnerable situation related to a specific aspect of a person's identity or circumstance

15. As they move, some people are more at risk of human rights violations than others owing to their persisting unequal treatment and discrimination based on factors including age, gender, ethnicity, nationality, religion, language, sexual orientation or gender identity, or migration status, singly or in combination. Certain people, such as pregnant women, persons in poor health, including those with HIV, persons with disabilities, older persons, or children (including unaccompanied or separated children), are more at risk because of their physical and/or psychological condition.

B. Principles and practical guidance

16. There is an international legal framework that specifically protects the rights of all migrants. However, more precise understanding of the human rights standards for migrants in vulnerable situations, as well as of how States (and other stakeholders) can operationalize those standards in practice, is lacking. The principles and guidelines are accordingly an attempt to provide guidance to States and other stakeholders on how to implement obligations and duties to respect, protect and fulfil the rights of migrants who are moving in vulnerable situations, including within large and/or mixed movements.

17. The principles are drawn directly from international human rights law and related standards, including international labour law, refugee law, criminal law, humanitarian law, the law of the sea, customary international law and general principles of law, including in relation to specific groups in such movements, such as children, persons with disabilities, women at risk, older persons, and lesbian, gay, bisexual, transgender and intersex individuals. The guidelines elaborate international best practice related to each principle in order to assist States (and other stakeholders) to develop, strengthen, implement and monitor measures to protect migrants in vulnerable situations. The guidelines are derived from international human rights law and other relevant branches of law, authoritative interpretations or recommendations by the international human rights treaty bodies and the

special procedure mandate holders of the Human Rights Council, as well as other expert sources where relevant.[12] It should be noted that the principles and their associated guidelines are interrelated and inform each other; as such the principles and guidelines should be read holistically.

III. The Principles[13]

18. The proposed text of the draft principles is as follows:

Principle 1. Ensure that human rights are at the centre of addressing migration, including responses to large and/or mixed movements of migrants.[14]

Principle 2. Counter discrimination against migrants in all its forms.[15]

---

[12] The guidance of the international human rights treaty bodies and the special procedure mandate holders of the Human Rights Council is legally binding to the extent that their work is based on binding international human rights law and enjoys the collaboration of States in the system; and also by the authority given on the one hand to the treaty bodies by their creation in accordance with the provisions of the treaty that they monitor, and on the other the authority provided to the special procedure mandate holders by the Human Rights Council. The recommendations of the treaty bodies and special procedure mandate holders are also considered authoritative by prominent international and regional judicial institutions.

[13] The sources of international and regional law listed in the footnotes to each principle are further supplemented by various general comments of the human rights treaty bodies, United Nations resolutions and international and regional case law, which are not listed here for reasons of space.

[14] See Universal Declaration of Human Rights, arts. 1 and 2; Charter of the United Nations, Arts. 1 (3) and 55 (c); International Covenant on Civil and Political Rights, art. 2 (1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 7; Convention on the Rights of Persons with Disabilities, art. 4; Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, arts. 2, 4, 14 and 16; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 2 (b). Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1; the American Convention on Human Rights, art. 1; the African Charter on Human and Peoples' Rights, art. 2; and the Arab Charter on Human Rights, art. 3.

[15] See Universal Declaration of Human Rights, arts. 2 and 7. The core human rights treaties enshrine a provision on the principle of non-discrimination, which guarantees that every right that the covenant or convention provides for shall apply to every person without any discrimination of any kind based, for example, on race, colour, sex, language, religion, political opinion, national and social origin, birth and other status. See International Covenant on Civil and Political Rights, art. 2; International Covenant on Economic, Social and Cultural Rights, art. 2 (2); International Convention on the Elimination of All Forms of Racial Discrimination, art. 2; Convention on the Elimination of All Forms of Discrimination against Women, arts. 1 and 2; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1; Convention on the Rights of the Child, art. 2; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 1 (1); Convention on the Rights of Persons with Disabilities, arts. 3 (b) and 5; International Convention for the Protection of All Persons from Enforced Disappearance, art. 2. See also International Convention on the Elimination of All Forms of Racial Discrimination, arts. 4, 5 and 7; International Covenant on Civil and Political Rights, arts. 20 (2) and 26; and International Covenant on Economic, Social and Cultural Rights, art. 2 (2). Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 14 and its Protocol No. 12, preamble; American Convention on Human Rights, art. 1; African Charter on Human and Peoples' Rights art. 25; Arab Charter on Human Rights, art. 2.

Principle 3. Protect the lives and safety of migrants and ensure rescue and immediate assistance to all migrants facing risks to life or safety.[16]

Principle 4. Ensure access to justice for migrants.[17]

Principle 5. Ensure that all border governance measures protect human rights, including the right to freedom of movement and the right of all persons to leave any country, including their own, recognizing that States have legitimate interests in exercising immigration controls.[18]

Principle 6. Ensure that all returns are only carried out in full respect for the human rights of migrants and in accordance with international law, including upholding the principle of non-refoulement, the prohibition of arbitrary or collective expulsions and the right to seek asylum.[19]

---

[16] See Universal Declaration of Human Rights, art. 3; International Covenant on Civil and Political Rights, art. 6, noting that article 4 provides that no derogation is admitted for this principle even in times of public emergency; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 9; Convention on the Rights of Persons with Disabilities, art. 11; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, arts. 2 and 6 (3); Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, arts. 9 (1) (a) and 16 (3); Convention on the Law of the Sea, art. 98. Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2; American Convention on Human Rights, art. 4; African Charter on Human and Peoples' Rights, art. 4; Arab Charter on Human Rights, art. 5.

[17] See Universal Declaration of Human Rights, arts. 7 and 10; International Covenant on Civil and Political Rights, arts. 2 (3) (a) and (c) and 14; International Convention on the Elimination of All Forms of Racial Discrimination, arts. 5 (a) and 6; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 18; International Convention for the Protection of All Persons from Enforced Disappearance, art. 12; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 6 (2), (3) and (6); Convention relating to the Status of Refugees, art. 16 (1); Convention relating to the Status of Stateless Persons, art. 39 (1.2). Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, arts. 6 and 13; Council of Europe Convention on Action against Trafficking in Human Beings, art. 15 (2); American Convention on Human Rights, arts. 8 and 25; African Charter on Human and Peoples' Rights, art. 7; Arab Charter on Human Rights, art. 9.

[18] See Universal Declaration of Human Rights, art. 13; International Covenant on Civil and Political Rights, art. 12 (1) and (2); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 8 (1) and 79; Convention on the Rights of Persons with Disabilities, art. 18; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 11 (1); Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 11 (1); Convention relating to the Status of Refugees, art. 26; Convention relating to the Status of Stateless Persons, art. 26. Regional norms, including Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto, art. 2; American Convention on Human Rights, art. 22; African Charter on Human and Peoples' Rights, art. 12 (1), (2) and (3); Arab Charter on Human Rights, art. 4.

[19] See Universal Declaration of Human Rights, art. 14; International Covenant on Civil and Political Rights, art. 13; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3 (1) and (2); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 22 (1) and (2); International Convention for the

Principle 7. Protect migrants from all forms of violence and exploitation, whether inflicted by institutions or officials, or by private individuals, entities or groups.[20]

Principle 8. Uphold the right of migrants to liberty and prohibition of arbitrary detention through making targeted efforts to end immigration detention of migrants. Never detain children on account of their migration status or that of their parents.[21]

Principle 9. Ensure the widest protection of the family unity of migrants, facilitating family reunification and preventing arbitrary or unlawful interference in the right of migrants to the enjoyment of private and family life.[22]

Protection of All Persons from Enforced Disappearance, art. 16; Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 18 (5); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 8 (1) and (2); Convention relating to the Status of Refugees, arts. 32 and 33; Convention relating to the Status of Stateless Persons, art. 31 (1). Regional norms, including Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto, art. 4; Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1; African Charter on Human and Peoples' Rights, art. 12 (4) and (5); Arab Charter on Human Rights, arts. 4 and 23.

[20] See Universal Declaration of Human Rights, arts. 4 and 5; International Covenant on Civil and Political Rights, arts. 7 and 9.1; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2 (1); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (b); Convention on the Elimination of All Forms of Discrimination against Women, art. 6; Convention on the Rights of the Child, art. 19 (1) and see also arts. 34, 35, 36 and 37 and the Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 10, 11 (1), (2) and (3) and 16 (2); Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, arts. 6 (3) and 16 (2); Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, arts. 3 (a) and 9 (5); Protocol of 2014 to the Forced Labour Convention (1930), art. 1 (1). Regional norms including the Convention for the Protection of Human Rights and Fundamental Freedoms, arts. 3 and 4; American Convention on Human Rights, arts. 5 (1) and (2) and 6 (1) and (2); African Charter on Human and Peoples' Rights, art. 5; Arab Charter on Human Rights, arts. 4 and 13.

[21] See Universal Declaration of Human Rights, arts. 3 and 9; International Covenant on Civil and Political Rights, art. 9 (1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 16 (1) and (4); International Convention for the Protection of All Persons from Enforced Disappearance, arts. 1, 2.1, 17 and 23; Convention relating to the Status of Refugees, art. 31; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 5. Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 5; Council of Europe Convention on Action against Trafficking in Human Beings, art. 26; American Convention on Human Rights, art. 7 (1) and (2); African Charter on Human and Peoples' Rights, art. 6; Arab Charter on Human Rights, arts. 5 and 8.

[22] See Universal Declaration of Human Rights, arts. 12 and 16; International Covenant on Civil and Political Rights, art. 23 (1); International Covenant on Economic, Social and Cultural Rights, art. 10 (1); Convention on the Rights of the Child, arts. 2, 10, 16 and 22. The family is placed at the centre of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, with the rights enshrined in the Convention guaranteed directly to migrant workers and to their families, see in particular article 44; ILO, Migrant Workers (Supplementary Provisions) Convention No. 143 (1975), art. 13.1. Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 8; American Convention on Human Rights, art. 17;

Principle 10. Guarantee the human rights of all children in the context of migration and ensure that they are treated as children first and foremost.[23]

Principle 11. Protect the human rights of migrant women and girls.[24]

Principle 12. Ensure the enjoyment of the highest attainable standard of physical and mental health of all migrants.[25]

Principle 13. Safeguard the right of migrants to an adequate standard of living.[26]

Principle 14. Guarantee the right of migrants to work in just and favourable conditions.[27]

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 15 (1) and (2); African Charter on Human and Peoples' Rights, art. 18 (1) and (2); Arab Charter on Human Rights, arts. 17 and 38.

[23] See Universal Declaration of Human Rights, art. 26; Convention on the Rights of the Child; International Covenant on Civil and Political Rights, art. 24; International Covenant on Economic, Social and Cultural Rights, art. 10 (3); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 12 (4), 17 (6), 29, 30 and 45 (2) and (4); Convention on the Rights of Persons with Disabilities, art. 18 (2); International Convention for the Protection of All Persons from Enforced Disappearance, art. 25 (a); Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 16 (4); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, arts. 3 (c) and (d), 6 (4) and 10 (2). Regional norms including the American Convention on Human Rights, art. 19; African Charter on Human and Peoples' Rights, art. 18 (3); Arab Charter on Human Rights, art. 38 (b).

[24] See Universal Declaration of Human Rights, art. 26; Convention on the Elimination of All Forms of Discrimination against Women; International Covenant on Civil and Political Rights, art. 3; International Covenant on Economic, Social and Cultural Rights, art. 10 (2); Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 16 (4); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 10 (2). Regional norms, including the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention); African Charter on Human and Peoples' Rights, art. 18 (3), and its Protocol on the Rights of Women in Africa, including in particular art. 2; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, including in particular art. 9.

[25] See Universal Declaration of Human Rights, art. 25; International Covenant on Economic, Social and Cultural Rights, art. 12; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5; Convention on the Rights of the Child, art. 3 (3); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 28; Convention on the Elimination of All Forms of Discrimination against Women, art. 12 (1); Convention on the Rights of Persons with Disabilities, art. 25; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 6 (3). Regional norms including the African Charter on Human and Peoples' Rights, art. 16, and its Protocol on the Rights of Women in Africa, art. 14; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 10 (1).

[26] See Universal Declaration of Human Rights, arts. 21 (2), 22 (1), 24 and 25 (1); International Covenant on Economic, Social and Cultural Rights, arts. 9 and 11 (1); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 6 (4); Convention relating to the Status of Refugees, arts. 21, 23 and 24; Convention relating to the Status of Stateless Persons, arts. 21, 23 and 24. Regional norms, including the African Charter on Human and Peoples' Rights, art. 13 (2) and (3); and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 9.

Principle 15. Protect the right of migrants to education, including primary, secondary and higher education and vocational and language training.[28]

Principle 16. Uphold migrants' right to information.[29]

Principle 17. Guarantee monitoring and accountability in all responses to migration, including in large and/or mixed movements of migrants.[30]

---

[27] See Universal Declaration of Human Rights, art. 23; International Covenant on Economic, Social and Cultural Rights, arts. 6 and 7; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (e) (i); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 25 (1); Convention relating to the Status of Refugees, in particular art. 17; Convention relating to the Status of Stateless Persons, chap. III. Regional norms, including the African Charter on Human and Peoples' Rights, art. 15; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, arts. 6 and 7.

[28] See Universal Declaration of Human Rights, art. 26 (1); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (e) (v); International Covenant on Economic, Social and Cultural Rights, art. 13; Convention on the Rights of the Child, art. 28; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 30; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 6 (3) and (4); Convention relating to the Status of Refugees, art. 22; Convention relating to the Status of Stateless Persons, art. 22; Convention Against Discrimination in Education, art. 1. Regional norms including Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2; African Charter on Human and Peoples' Rights, art. 17 (1); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 13 (1) and (3).

[29] See Universal Declaration of Human Rights, art. 19; Vienna Convention on Consular Relations, art. 36 (1) (b); International Covenant on Civil and Political Rights, arts. 14 and 19 (1) and (2); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5; International Convention for the Protection of All Persons from Enforced Disappearance, arts. 18 and 20; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 16 (5), 18 (3) (a) and 22 (3); Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 16 (5); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 6 (2) and (3). Regional norms, including the American Convention on Human Rights, art. 7 (4); and the African Charter on Human and Peoples' Rights, art. 9 (1).

[30] See Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, arts. 2 (3) (a) and (c) and 40; International Covenant on Economic, Social and Cultural Rights, art. 16 (1), with resolution 1985/17 of the Economic and Social Council establishing the Committee on Economic, Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination, arts. 6, 8 and 9; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14 (1), 17, 19 and 20; Convention on the Rights of the Child, arts. 39, 43 and 44; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 72, 73 and 83; Convention on the Rights of Persons with Disabilities, arts. 33, 34 and 35; International Convention for the Protection of All Persons from Enforced Disappearance, arts. 8 (2), 24 (4), 26 and 29; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 6 (6); Rome Statute of the International Criminal Court, Art. 75 (1). Regional norms including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 13; American Convention on Human Rights, arts. 10, 41 and 62; African Charter on Human and Peoples' Rights, arts. 26 (1) and 45; Arab Charter on Human Rights, arts. 40 and 41.

Principle 18. Respect and support the activities of human rights defenders and others working to rescue and provide assistance to migrants.[31]

Principle 19. Improve the collection of disaggregated data on the human rights situation of migrants, while ensuring the right to privacy and protection of personal data.[32]

Principle 20. Build capacity and promote cooperation amongst and between all relevant stakeholders to ensure a gender-responsive and human rights-based approach to migration governance and to understand and address the drivers of the movement of migrants.[33]

[31] See Universal Declaration of Human Rights, arts. 19 and 20 (1); International Covenant on Civil and Political Rights, arts. 19, 21, 22 and 25; International Convention for the Protection of All Persons from Enforced Disappearance, art. 3. Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 11; American Convention on Human Rights, arts. 13, 15 and 16; African Charter on Human and Peoples' Rights, arts. 10 and 11; and Arab Charter on Human Rights, art. 26.

[32] See Convention on the Rights of Persons with Disabilities, art. 31; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 9. Regional norms including the African Charter on Human and Peoples' Rights, art. 45 (1) (a).

[33] See Universal Declaration of Human Rights, art. 22 (1); Charter of the United Nations, Articles 1 (3) and 56; International Covenant on Economic, Social and Cultural Rights, art. 2 (1); Convention relating to the Status of Refugees, art. 35; United Nations Convention Against Transnational Organized Crime, art. 1; Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, arts. 2, 7, 14 (2) (e) and 18 (6); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 2.

Annex

Glossary

Asylum seeker	An asylum seeker is any person who has applied for protection as a refugee and is awaiting the determination of their status.
Border governance	Legislation, policies, plans, strategies, action plans and activities related to the entry into and exit of persons from the territory of the State, including detection, rescue, interception, screening, interviewing, identification, reception, detention, removal, expulsion, or return, as well as related activities such as training, technical, financial and other assistance, including that provided to other States.[a]
Firewalls	Measures to effectively separate immigration enforcement activities from public service provision by State and non-State actors and from labour law enforcement, as well as from criminal justice measures for victims of crime, so as not to deny human rights to persons in an irregular status.[b] They are "designed to ensure, particularly, that immigration enforcement authorities are not able to access information concerning the immigration status of individuals who seek assistance or services at, for example, medical facilities, schools and other social service institutions. Relatedly, firewalls ensure that such institutions do not have an obligation to inquire or share information about their clients' immigration status."[c]
Human rights defenders	A term used to describe people who, individually or with others, act to promote or protect human rights. There is no specific definition of who is or can be a human rights defender.[d] A person or group need not necessarily self-identify as a human rights defender to constitute one. In the present principles and guidelines, "human rights defender" should be read as specifically including those working with migrants, including providing humanitarian assistance.
Large movements	"Whether a movement is characterized as 'large' depends less on the absolute number of people moving than on its geographical context, the receiving States' capacities to respond and the impact caused by its sudden or prolonged nature on the receiving country."[e]

[a] See Recommended Principles and Guidelines on Human Rights at International Borders.

[b] See François Crépeau and Bethany Hastie, "The case for 'firewall' protections for irregular migrants: safeguarding fundamental rights", *European Journal of Migration and Law*, vol. 17, Nos. 2-3 (2015); European Commission against Racism and Intolerance, general policy recommendation No. 16 on safeguarding irregularly present migrants from discrimination; and ILO, *Promoting Fair Migration: General Survey Concerning the Migrant Workers Instruments* (2016), paras. 480-482. See also European Union Agency for Fundamental Rights, "Apprehension of migrants in an irregular situation — fundamental rights considerations" (2012).

[c] See Crépeau and Hastie, "The case for 'firewall' protections" p. 165.

[d] The fourth preambular paragraph of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms refers to "individuals, groups and associations ... contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals".

[e] See A/70/59, para. 11.

	"'Large movements' may be understood to reflect a number of considerations, including: the number of people arriving, the economic, social and geographical context, the capacity of a receiving State to respond and the impact of a movement which is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another. 'Large movements' may involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes."[f]
Migrants	In the present principles and guidelines, an international migrant (or migrant) refers to "any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence".[g] There is no universal, legal definition of a migrant. The term "migrant" within the present principles and guidelines refers throughout to a migrant in a vulnerable situation.[h]
Mixed migration	The term describes the cross-border movements of people with varying protection profiles, reasons for moving and needs, who are moving along the same routes, using the same transport or means of travel, often in large numbers.[i] There is no official or agreed definition of mixed migration.
Non-refoulement	The prohibition of refoulement under international human rights law generally applies to any form of removal or transfer of persons, regardless of their status, where there are substantial grounds for believing that the individual would be in danger of suffering torture or other irreparable harm in the place to which he or she is to be transferred or removed.[j] As an inherent part of the prohibition of torture and other forms of ill-treatment, the principle of non-refoulement is characterized by its absolute nature.[k]

[f] New York Declaration for Refugees and Migrants, para. 6.

[g] See Recommended Principles and Guidelines on Human Rights at International Borders, chap. I, para. 10. IOM defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (a) the person's legal status; (b) whether the movement is voluntary or involuntary; (c) what the causes for the movement are; or (d) what the length of the stay is. Some categories of migrants are defined in international instruments, particularly "migrant worker" or "migrant for employment", which are defined in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 2 (1); ILO Migration for Employment Convention (Revised) No. 97 (1949), art. 11; ILO Migrant Workers (supplementary provisions) Convention, No. 143 (1975), art. 11. UNHCR always refers to refugees and migrants separately, to maintain clarity about the causes and character of refugee movements and not to lose sight of the specific obligations owed to refugees under international law.

[h] For an explanation of the term "migrant in a vulnerable situation", see paras. 12-15 of the report.

[i] See A/HRC/31/35, para. 10.

[j] See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3; and Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation on States parties to the Covenant, para. 12.

[k] See A/70/303, paras. 38 and 41.

Refugee	A refugee is a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such [persecution] … is unable or, owing to such fear, is unwilling to return to it."[l]
Separated children	Children who have been separated from both parents or from their previous legal or customary primary caregiver, but not necessarily from other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Children may become separated at any point of their migration.[m]
Statelessness	A stateless person is defined in article 1 (1) of the Convention relating to the Status of Stateless Persons as someone who is "not considered as a national by any State under the operation of its law".[n]
Unaccompanied children	Children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Children may become unaccompanied at any point of their migration.[o]
Xenophobia	The term has commonly been used to describe attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the reality or perception that they are outsiders or foreigners to the community, society or national identity.[p] There is no universal, legal definition of xenophobia.

---

[l] See Convention relating to the Status of Refugees, art. 1. A (2).

[m] See Committee on the Rights of the Child, general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, para. 8.

[n] The International Law Commission has considered the definition in article 1 (1) of the Convention to form part of customary international law (see A/61/10, Chap. II Natural Persons, Art. 8, Commentary (3), page 49). See also UNHCR, *Handbook on Protection of Stateless Persons Under the 1954 Convention relating to the Status of Stateless Persons* (Geneva, 2014).

[o] See Committee on the Rights of the Child, general comment No. 6, para. 7.

[p] See ILO, IOM and OHCHR, "International migration, racism, discrimination and xenophobia" (2001), p. 2.